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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,090	01/20/2004	Nicholas F. Fawcett	NFF-101A	1409

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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,090

Applicant(s)

FAWCETT ET AL.

Examiner

Randall Chin

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7, 8, 10, 12, 13, 15, 18, 19 and 21 is/are rejected.
- 7) ☒ Claim(s) 3, 5, 6, 9, 11, 14, 16, 17 and 20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the phrase in parentheses (last line) should be deleted.

Correction is required. See MPEP § 608.01(b).

Claim Objections

2. In accordance with 37 CFR 1.126, claims 5 (second occurrence of that claim) to claim 20 have been renumbered as claims 6 to 21, respectively. Note, the dependencies for these claims have not been changed by the Examiner.

Claims 2, 4, 5, 6 and 21 are objected to because of the following informalities:

Claim 2, line 2, "the brush" technically lacks antecedent basis.

Claim 2, line 3, "the back inside wall" lacks antecedent basis.

Claims 4 and 5, lines 1-2, the phrase "has a release mechanism to both sides: is awkwardly written.

Claims 4, 5 and 6, line 2, "the detachable drip tray" should have antecedent basis.

Claim 6, line 2, "the front wall" lacks proper antecedent basis.

Claim 21 should be deleted since claim 21 does not define any patentable subject matter and is improper in format. No art rejection can be applied to this claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 7, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gioia '824.

The patent to Gioia '824 teaches with respect to claim 1 a holder which could well be used for paint brushes (merely involves intended use) comprising a **generally** (broad term) wedge-shaped container 13 (see tapering bottom in Fig. 1) having means for clipping 33, 35 (Fig. 3) (which could be a paint can rim) and including a drip tray 17 forming a base 25 which can be removed (Fig. 2) for cleaning. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

As for claim 2, the holder further has an interior bumpers defined by ribbed, raised portions 39, 41 (Fig. 2; col. 2, lines 64-66) which can enable one to drag excess paint from a brush placed on the top half of the back inside wall (Fig. 2).

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As well as claim 4 is understood, the holder further has a release mechanism 27, 27 to both sides (Fig. 2) to allow removal of the detachable drip tray 25.

As for claims 7, 8 and 10, as stated above, Gioia's holder device could well be used to exclusively house a paint brush as this would merely involve an intended use.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12, 13, 15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gioia '824.

With respect to claims 12, 13, 15, 18 and 19, Gioia '824 is explicitly silent as to what material the holder is made from. Whether the holder is made from metal, plastic or wood, or any combination thereof, such material(s) would be obvious to one skilled in the art since plastic, for example, would be economically beneficial, lightweight and would also enable mass production of the holder device.

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Allowable Subject Matter

7. Claims 3, 5, 6, 9, 11, 14, 16, 17 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Vines, Puder, Misiukowiec, McLaughlin, and Bebak are relevant to various brush or roller holder arrangements:

9. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached at (571) 272-1281. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin
Primary Examiner
Art Unit 1744